IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

J U D G M E N T.

DUNGAR SINGH. V. PHOOL SINGH & OTHERS.

S. B. CIVIL FIRST APPEAL NO.76/91
against the judgment & decree dated 11.02.1991 passed by Shri Sukhdarshan Kumar Bansal, Additional District Judge, Bali, in Civil Original Suit No.24/86.

DATE OF JUDGMENT: : 06-04-2007

PRESENT.

HON'BLE MR. JUSTICE BHAGWATI PRASAD

Mr.Mridul Jain, with Mr.Anuj Sehlot, for appellant.
Mr.J.M.Bhandari, for respondents.

BY THE COURT:

Present appeal has been filed by the plaintiff Dungar Singh against the order of dismissal of his suit, passed by the Additional District Judge, Bali, being Civil Original Case No.24/86. The plaintiff Dungar Singh filed the suit for recovery of Rs.55,500/- against the defendant. According to the allegations in the complaint, he had purchased Bus RJY-2428 from defendant No.3, but the respondent had taken away bus by force. In this regard, a FIR was lodged at Police Station, Charbhuja. After seizure, the bus was seized in this case. The Judicial Magistrate, Kumbhalgarh gave this bus to the plaintiff on Supurdginama by order dated 5.7.80. Further case of the

plaintiff is that under the orders of the Judicial Magistrate, Kumbhalgarh, he was to produce this bus before the Court on 12.8.81. He did not hand over the bus to the Police Station, Charbhuja also on 12.8.81. For the purpose of handing over the bus to the police station, he got the bus moved out of Marwarjunction. The bus got stranded on the way and, therefore, could not reach police station on 12.8.81 and information in this regard was given to the Judicial Magistrate, Kumbhalgarh by a telegram.

An application was moved on behalf of the defendant No.3 to the Court of the Judicial Magistrate, Kumbhalgarh for the seizure of the bus and, consequently, the order was passed for the seizure of the bus. The case of the plaintiff is that pursuant to the order of the Judicial Magistrate, defendants No. 1,2 and 3 came to the well of Laxman Singh on 18.8.81 and the bus was seized. At the time of the seizure, neither the seizure memo was prepared, nor any receipt was given. The respondents No.1 to 3, at that time, had taken away the valubale material out of the bus. Having known this fact, an application was moved by the plaintiff on 20.8.81 before the Judicial Magistrate, about the theft. But the Judicial Magistrate held the plaintiff guilty. The case of the plaintiff is that since the bus remained in the police station, the respondents have taken away the goods of worth Rs.55,000/-.

Respondent No.1 contested the suit and submitted that under the orders of the learned Judicial Magistrate dated 11.8.81, the bus was to be handed over to the police station, Charbhuja by the plaintiff,

but it was not handed over. When he went to seize the bus under the orders of the learned Judicial Magistrate, he found that the engine gear etc. were missing and tyres were replaced. In this regard, a CR No.64/81 was drawn. The case was registered against the plaintiff. The bus was drawn out by a Tractor as it was not capable of being driven .

On the basis of the pleadings of the parties, the following issues were framed :-

"(1) आया सुमेर गांव तहसील देसूरी में जब बस को 18.8.81 को पुलिस ने बस आर 0 जे0 वाई 0 2428 अपने कब्जे में ली तो उस समय उसमें से इंजन, गैर व अन्य सामान गायब था व उसी हालत में फिर यह बस वादी को सम्भलाई गई थी?/प्रतिवादीगण/

(2) आया उक्त बस जब कब्जा पुलिस में 18.8.81 को ली तब तो उसमें वह सब सामान था जिस का विवरण वादपत्र की मद नम्बर-3 में लिखा हुआ है व उसके बाद पुन: जब वह बस वादी को सम्भलाई गई तो उक्त सामान उसमें नहीं था ? /वादी/

(3) आया वादपत्र की मद नम्बर-3 में वर्णित सामान उसी कीमत का था जिस का अभिकथन वाद पत्र की पद नम्बर-3 में लिखा गया है? /वादी/

(4) आया उक्त सामान प्रतिवादी नम्बर-1 लगायत 3 ने गायब किया है व इसलिए वे इस सामान की कीमत वादी को देने के लिए उतरदायी है ? /वादी/

(5) आया उक्त बस जब 18.8.81 को पुलिस द्वारा अपने कब्जे में ली गई, वादी के कब्जे में थी ? /वादी/

(6) आया प्रतिवादी नम्बर-1 से 3 विशेष हर्जा पाने के अधिकारी हैं तो किस कदर ?/प्रतिवादी/

(7) आया प्रतिवादीगण नम्बर-1 से 3 ने यह कार्य राज्य सरकार के कर्मचारीगण होते हुए किस प्रकार से किया व इसके लिए राज्य सरकार भी उत्तरदायी है?/वादी/

(8) अनुतोष ?"

While deciding issues No.1 and 2, the learned tiral Court came to the conclusion that the plaintiff has produced three witnesses, namely, PW 1 Dungar Singh, PW2 Hanuwant Singh and PW 3 Babu Khan to support his case. PW 1 is the plaintiff himself. He stated that he has not seen anybody removing the goods from the bus. He received the information from two persons Sohan Singh and Usman Khan as has been given out by him in his application (Ex.P-1) submitted before the Magistrate. Both these persons are material witnesses, but have not been produced and since the plaintiff having not seen the removal, the case of the plaintiff was not worth reliable. The other two witnesses PW 2 Hanuwant Singh and PW 3 Babu Khan have also not been relied upon by the trial Court by finding their statements to be improper and untrue and thus, issues No.1 and 2 were held against the plaintiff. Consequently, issues No. 3, 4 and 5 have also been held against the plaintiff and the suit was dismissed.

Arguing the case of the appellant, the learned counsel submitted that PW 2 Hanuwant Singh states that he had seen bus being started at his well and PW 3 Babu Khan states that he has

repaired the excel of the bus and handed over Bus to the plaintiff Dungar Singh at the well of Laxman Singh. The case of the plantiff is not that the bus was repaired by Babu Singh and handed over to him. Aurguing the case, the learned counsel for the apellant submitted that PW 2 Hanuwant Singh s/o. Laxman Singh and PW 3 Babu Khan have stated that the bus was in working order while it was at the well of PW 2 and, therefore, the goods were removed only while it was in the custody of police personnel, therefore, the case has wrongly been dismissed.

Learned counsel for the respondents submitted that the statement of PW 1 is of no consequence and he has not seen the goods being removed. The statement of PW 3 is also false because he stated that he handed over the bus after repair to PW 1 which is not the case of PW 1 Dungar Singh - palintiff and PW 2 Hanuwant Singh does not corroborate the statement of PW 3 Babu Khan, inasmauch as that the bus was repaired at his well, because, according to PW 2, the bus was drawn by Tractor. If it was repaired and excel was replaced by P.W.3 then there was no reason why it was drawn out with the help of Tractor.

Having heard learned counsel and given my thoughtful consideration to the submissions of the learned counsel for the parties as well as the statement of PW 1, it is clear and categoric that Dungar Singh (P.W.1) has not seen the goods being removed. His information is derived on the basis of the statement made to him by Sohan Singh and Usman Khan. His information is that it was seen by Sohan Singh

and Usman Khan and since they have not been produced, it does not support the case of the plaintiff. So far as the statement of PW 3 Baboo Khan is concerned, he stated that he repaired the bus and handed it over to PW 1 which is not the case of the PW 1 himself. If the bus was not repaired and handed over to PW 1 as stated by PW 3, then story of PW 3 is unreliable. Further PW 2 states the bus had been taken away from his well. Thus, either the statement of PW 2 is incorrect or the statement of PW 3 is incorrect. If the excel was replaced, then it was not necessary to take it away by towing and it could have been driven as stated by PW 2 that the bus had started at his place. The statements of the witnesses are irreconcilable and, in this back ground, it cannot be said that the plaintiff has succeeded in establishing his case.

The plaintiff was required to produce the bus in the police station on the day when he alleges that the bus broke down. Having failed to prove, he was in search of a plea of alibi and he might have done something more when he actually alleges in his statement. In this view of the matter, if the trial Court has not believed the story of the plaintiff, this Court feels that no illegality appears to have been committed by the trial Court. There is no force in the appeal. The appeal is dismissed.

(BHAGWATI PRASAD), J.

scd.